

# Escrow Agreement For Working Capital

U.S. Department of Housing  
and Urban Development  
Office of Housing

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**THIS AGREEMENT** is effective the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_, the Lender and \_\_\_\_\_, the Borrower. The terms Lender and Borrower shall be deemed to have the meanings set forth set forth in the HUD regulatory agreement applicable to this transaction.

The Borrower is the owner of a project known as \_\_\_\_\_ located at \_\_\_\_\_ and further identified as HUD Project No. \_\_\_\_\_, which project has been, is being, or will be constructed from proceeds of a Mortgage Loan (or Deed of Trust) in the original principal amount of \$ \_\_\_\_\_ (hereinafter, the Mortgage Loan) from the Lender with respect to which Mortgage Loan the Secretary of the United States Department of Housing and Urban Development (hereinafter, HUD) has issued a commitment to insure.

The commitment to insure is conditioned upon a working capital deposit being established and funded as indicated below, which working capital deposit has not been included in the Mortgage Loan proceeds but which could be funded from excess cash available to the Borrower. This requirement applies to both the profit-motivated and the not-for-profit Borrower.

In consideration of the premises, the parties acknowledge and agree as follows:

1. At initial endorsement of the Mortgage Loan, the Borrower has deposited with the Lender, which acknowledges receipt of same, the sum of \$ \_\_\_\_\_ (herein called the Deposit) in the form of [*specify one*]:
  - a. \_\_\_\_\_ cash, or
  - b. \_\_\_\_\_ an unconditional, irrevocable letter of credit issued to Lender by a banking institution.
2. The Lender controls the Deposit and it is understood that the funds in the Deposit may be released or allocated for the purposes indicated below and for no other purpose without the prior written approval of HUD:
  - (i) The cost of equipping and renting the project after final completion of construction of the project (Note: Not applicable to Section 232 Mortgages);

(ii) For accruals during the course of construction, for interest, mortgage insurance premiums, taxes, ground rents, property insurance premiums and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted, and also for allocation to such accruals after completion of construction.

3. Any balance of said funds, together with interest earned on the funds remaining in the Deposit after the date of sustaining occupancy as determined by HUD, will be returned to the Borrower, provided that the Mortgage Loan is not in default and unless HUD has directed other disposition.

4. The Lender will not make any disbursements from the Deposit without the prior written approval of HUD for projects involving Low-Income Housing Tax Credits, where the Borrower certifies at firm commitment that it will apply any balance of said funds to the reserve for replacement or any other restricted account specified by HUD.

5. The Deposit, if in the form of cash, shall be held by the Lender, in an interest-bearing account that is fully guaranteed by the United States of America. The Lender may draw upon any letter of credit included in the Deposit and convert the same to cash, which cash shall then be held and disbursed pursuant to the terms of this Agreement.

6. The Deposit together with interest, which is being held under the Contract of Mortgage Insurance, shall be subject to immediate application to the mortgage debt in the event of default under the Mortgage Loan at any time before the expiration of the escrow period.

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

BORROWER:

LENDER:

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Name and Title

\_\_\_\_\_  
Name and Title

### **Warning**

Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims and penalties under 24 C.F.R. Parts 24 and 28.